

AMENDED IN SENATE APRIL 21, 2014

SENATE BILL

No. 1177

Introduced by Senator Steinberg

February 20, 2014

An act to add Chapter 22.2 (commencing with Section 22584) to Division 8 of the Business and Professions Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1177, as amended, Steinberg. Privacy: students.

Existing law, on and after January 1, 2015, prohibits an operator of an Internet Web site or online service from knowingly using, disclosing, compiling, or allowing a 3rd party to use, disclose, or compile the personal information of a minor for the purpose of marketing or advertising specified types of products or services. Existing law also makes this prohibition applicable to an advertising service that is notified by an operator of an Internet Web site, online service, online application, or mobile application that the site, service, or application is directed to a minor.

This bill would prohibit an operator of an Internet Web site, online service, online application, or mobile application with actual knowledge that the site, service, or application is used for K–12 school purposes, *as defined*, and was designed and marketed for K–12 school purposes from using, sharing, disclosing, or compiling personal information about a K–12 student for commercial purposes. This bill would require an operator of an Internet Web site, online service, online application, or mobile application with actual knowledge that the site, service, or application is used for K–12 school purposes and was designed and marketed for K–12 school purposes to ensure that specified encryption processes are used, ~~to provide a notice to the operator of a secondary~~

~~site, service, or application that is accessible through the noticing operator's site, service, or application that their secondary site, service, or application is used for K–12 school purposes on a site, service, or application designed and marketed for K–12 school purposes; and to delete a student's personal information under specified circumstances.~~

Vote: majority. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 22.2 (commencing with Section 22584)
2 is added to Division 8 of the Business and Professions Code, to
3 read:

4
5 CHAPTER 22.2. STUDENT ONLINE PERSONAL INFORMATION
6 PROTECTION ACT
7

8 22584. (a) An operator of an Internet Web site, online service,
9 online application, or mobile application with actual knowledge
10 that the site, service, or application is used for K–12 school
11 purposes and was designed and marketed for K–12 school purposes
12 shall comply with all of the following requirements:

13 (1) It shall not use, share, disclose, or compile personal
14 information about a K–12 student for any purpose other than the
15 K–12 school purpose and for maintaining, *developing, and*
16 *improving* the integrity *and effectiveness* of the site, service, or
17 application, *as long as no personal information is used for any*
18 *purpose in furtherance of advertising or to amass a profile on the*
19 *student for purposes other than K-12 school purposes.*

20 (2) It shall not use, share, disclose, or compile a student's
21 personal information for any commercial purpose, including, but
22 not limited to, advertising or profiling.

23 (3) It shall not allow, facilitate, or aid in the marketing or
24 advertising of a product or service to a K–12 student on the site,
25 service, or application.

26 (4) It shall take ~~all~~ reasonable steps to protect the *personal*
27 *information* data at rest and in motion in a manner that meets or
28 exceeds *reasonable and appropriate* commercial best practices.
29 An operator shall be deemed to be in compliance with this
30 paragraph if the operator ensures the following:

1 (A) Valid encryption processes for data at rest *in the operator's*
2 *own data storage systems* are consistent with NIST Special
3 Publication 800-111, Guide to Storage Encryption Technologies
4 for End User Devices.

5 (B) Valid encryption processes for data in motion *on public*
6 *networks* are those that comply, as appropriate, with NIST Special
7 Publications 800-52, Guidelines for the Selection and Use of
8 Transport Layer Security (TLS) Implementations; *NIST Special*
9 *Publication* 800-77, Guide to IPsec VPNs; or *NIST Special*
10 *Publication* 800-113, Guide to SSL VPNs, or others that are
11 Federal Information Processing Standards (FIPS) *Publication*
12 140-2 validated.

13 ~~(b) (1) An operator of an Internet Web site, online service,~~
14 ~~online application, or mobile application with actual knowledge~~
15 ~~that the site, service, or application is used for K-12 school~~
16 ~~purposes and the site, service, or application was designed and~~
17 ~~marketed for K-12 school purposes shall provide a notice to the~~
18 ~~operator of a secondary site, service, or application that is~~
19 ~~accessible through the noticing operator's site, service, or~~
20 ~~application that the secondary site, service, or application is used~~
21 ~~for K-12 school purposes on a site, service, or application designed~~
22 ~~and marketed for K-12 school purposes.~~

23 ~~(2) An operator of a site, service, or application designed and~~
24 ~~marketed for K-12 school purposes shall comply with this section~~
25 ~~upon either receiving notice under paragraph (1) that the site,~~
26 ~~service, or application is used for K-12 school purposes or if the~~
27 ~~operator otherwise has actual knowledge that the site, service, or~~
28 ~~application is used for K-12 school purposes.~~

29 ~~(3) An operator that fails to provide the notice required by~~
30 ~~paragraph (1) to a secondary site, service, or application shall be~~
31 ~~liable for the secondary site, service, or application's compliance~~
32 ~~with this section, unless that secondary site, service, or application~~
33 ~~had actual knowledge it was being used for K-12 purposes and~~
34 ~~was designed and marketed for K-12 school purposes.~~

35 (e)

36 (b) An operator of an Internet Web site, online service, online
37 application, or mobile application with actual knowledge that the
38 site, service, or application is used for K-12 school purposes and
39 that it was designed and marketed for K-12 school purposes shall

1 delete a student's personal information if any of the following
2 occurs:

3 (1) The site, ~~service~~ *service*, or application *has actual knowledge*
4 *that it is no longer used for the original K-12 school purpose.*
5 *purposes, unless the information is being used or maintained at*
6 *the direction of a school or school district and is under the direct*
7 *control of the school or district.*

8 (2) The student requests deletion, unless it is being used at the
9 direction of a school or district ~~for legitimate educational purposes~~
10 and is under the control of the school or district.

11 (3) ~~The student ceases to be a student at the institution and the~~
12 ~~operator becomes aware the student is no longer a student, unless~~
13 ~~it is being used at the direction of a school or district for legitimate~~
14 ~~educational purposes and is under the control of the school or~~
15 ~~district. The school or school district requests deletion.~~

16 ~~(d)~~

17 (c) Notwithstanding subdivision (a), an operator of an Internet
18 Web site, online service, online application, or mobile application
19 may disclose personal information of a student if other provisions
20 of federal or state law require the operator to disclose the
21 information, and the operator complies with the requirements of
22 federal and state law in *protecting and* disclosing that information.

23 ~~(e)~~

24 (d) An "online service" includes cloud computing services.

25 ~~(f)~~

26 (e) Notwithstanding subdivision (a), an operator of an Internet
27 Web site, online service, online application, or mobile application
28 may disclose personal information of a student for legitimate
29 research purposes as required by state and federal law and subject
30 to the restrictions under state and federal law *or as allowed by*
31 *state and federal law and under the direction of a school, school*
32 *district, or state department of education, as long as no personal*
33 *information is used for any purpose in furtherance of advertising*
34 *or to amass a profile on the student for purposes other than K-12*
35 *school purposes.*

36 ~~(g)~~

37 (f) For purposes of this section, "personal information" shall
38 mean any information or materials in any media or format created
39 or provided by a student, or the student's parent or legal guardian,
40 in the course of the student's, or parent's or legal guardian's, use

1 of the site, service, or application or an employee or agent of the
 2 educational institution, or gathered by the site, service, or
 3 application, that is related to a student and shall include, but not
 4 be limited to, information in the student's educational record, the
 5 student's ~~email~~ *e-mail* address, first and last name, home address,
 6 telephone number, other information that permits physical or online
 7 contact of a specific individual, discipline records, test results,
 8 special education data, juvenile delinquency records, grades,
 9 evaluations, criminal records, medical records, health records,
 10 social security number, biometric information, disabilities,
 11 socioeconomic information, food purchases, political affiliations,
 12 religious information, ~~email~~ *e-mail* messages, documents, unique
 13 identifiers, profile, search activity, location information, Internet
 14 Protocol (IP) address, metadata, any aggregation or derivative
 15 thereof, or any information gained through tracking, including
 16 login and logoff information, searches, typing, photos, voice
 17 recordings, and geolocation information.

18 (g) *For purposes of this section, "K-12 school purposes" shall*
 19 *mean purposes that customarily take place at the direction of the*
 20 *school, teacher, or school district or aid in the administration of*
 21 *school activities, including, but not limited to, instruction in the*
 22 *classroom or at home, administrative activities, and collaboration*
 23 *between students, school personnel, or parents, or are for the use*
 24 *and benefit of the school.*

25 (h) This section shall not be construed to limit the authority of
 26 a law enforcement agency to obtain any content or information
 27 from an operator as authorized by law or pursuant to an order of
 28 a court of competent jurisdiction.

29 (i) It is not the intent of the Legislature for this chapter to apply
 30 to general audience Internet Web sites.

31 (j) *It is not the intent of the Legislature for this section to limit*
 32 *internet service providers from providing internet connectivity to*
 33 *schools or students and their families.*

34 (k) (1) *An operator of an Internet Web site, online service,*
 35 *online application, or mobile application may use deidentified*
 36 *student personal information within the operator's site, service,*
 37 *or application or other sites, services, or applications owned by*
 38 *the operator to improve educational products, for adaptive learning*
 39 *purposes, and for customizing student learning.*

1 (2) *Subparagraph (1) shall not apply if the deidentified student*
2 *personal information is used for purposes of advertising.*
3 SEC. 2. The provisions of this act are severable. If any
4 provision of this act or its application is held invalid, that invalidity
5 shall not affect other provisions or applications that can be given
6 effect without the invalid provision or application.